IN THE HIGH C OURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.530 OF 2006

IN

SUMMARY SUIT NO.1392 OF 2006

1. Mr.Kashmirilal Agarwal & others ...Plaintiffs.

vs.

1. Mr.Niren C. Ajmera & another. ...Defendants.

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Mr.Yogendra Kanchan i/b. Dven Dwarkadas & Partners, for Plaintiffs.

Ms.Sonal Kothari, for Defendants.

**CORAM: D.K.DESHMUKH,J.**

**DATED: 17th January, 2007.**

**P.C.**:-

1. The defendants have been served with the summons for judgment on 12.12.2006. The defendants have not filed reply. The learned Counsel appearing for defendants, however, has pointed out that the suit claim of the plaintiffs is barred by the law of limitation. It is pointed out that the claim of the plaintiffs is for refund of the amount of registration fee which was deducted from the amount of the consideration payable to the plaintiffs for transfer of the flat. On

26.7.1998 from the amount of consideration payable to the plaintiffs an amount of Rs.5,10,000/- was deducted by the defendants as 50% share of the transfer fee of the plaintiffs. The plaintiffs by letter dated 7.11.2000 informed the defendant that on account of transfer fee only an amount of Rs.25,000/- was payable by the defendants to the Society. Therefore, 50% share of the defendants of the transfer fee would be Rs.12,500/- and therefore, after deducting that amount from Rs.5,10,000/- which has been deducted from the consideration payable to the plaintiffs by the defendants, the amount of Rs.4,97,500/- should be refunded. According to defendants, thus the cause of action to the plaintiffs for claiming the amount accrues in any case on 7.11.2000. Therefore, the suit filed on 13.3.2006 is barred by the law of limitation.

2. On this objection being raised, I heard the learned Counsel appearing for plaintiffs. He claims that though it is true that on 7.11.2000 the plaintiffs knew that they are entitled to refund of an amount of Rs.4,97,500/- and they demanded that amount from the defendants, there is revision application filed by the defendants before the Divisional Joint Registrar, Co-operative Societies wherein the order was passed by the Divisional Joint Registrar on 13.8.2002 and therefore, the suit is within limitation.

3. Firstly perusal of the order of the Divisional Joint Registrar shows that the dispute between the parties was about membership of the defendants of the Co-operative Society in which society the flat is situated and not about the payment of transfer fee. On the contrary in paragraph (8) of the order, the Divisional Joint Registrar recorded that defendants have already paid amount of the transfer fee. In any case that order was passed on 13.8.2002. Even if it is assumed that the cause of action accrues on that date, the suit filed on 13.3.2006 will not be within the period of limitation. Therefore, looking to the matter from any point of view the suit of the plaintiff is barred by the law of limitation. Therefore, it cannot be said that the defendants have no defence to offer. The summons for judgment is disposed of. The defendants are granted unconditional leave to defend the suit. Written statement to be filed within a period of four weeks from today.

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